We live in an era marked by intense political polarization, with partisan divides continuing to fracture the US. Even amidst political divisiveness, public health should be a unifying national value. Yet public health has emerged as among the country’s most contentious issues in recent years. From reproductive health, transgender care, and firearm safety to COVID-19 vaccines, public health is in the crosshairs of the culture wars. This will be a momentous year, with federal and state elections just months away and the US Supreme Court poised to reconsider fundamental health rights.

Reproductive Rights

Since the *Dobbs v Jackson Women's Health Organization* decision in 2022, 21 states have banned or severely restricted access to abortion, while 21 other states have enacted legal protections for access to abortion. In the first year following *Dobbs*, more than 40 lawsuits were filed challenging states’ abortion restrictions.1

This year the US Supreme Court will rule on 2 critical cases, one on abortions conducted during medical emergencies and the other on mifepristone. The Emergency Medical Treatment and Labor Act (EMTALA) requires federally funded hospitals to screen and stabilize all emergency patients, including providing abortions when medically necessary. In *Moyle v United States*, the US Supreme Court will determine whether EMTALA preempts Idaho’s total abortion ban. The US Court of Appeals for the Fifth Circuit recently ruled that emergency departments in Texas were not required to perform abortions. Vague and narrowly worded exemptions to criminal abortion laws have put pregnant patients’ health and lives in peril, while forcing health care professionals to violate medical ethics. EMTALA was enacted in part because poor pregnant patients were previously turned away from emergency departments, with dire health consequences,2 and federal law is supposed to supersede contrary state law. Yet, pregnant individuals’ health and lives are at risk in emergency departments in many parts of the country.

In *US Food and Drug Administration vs Alliance for Hippocratic Medicine*, the Supreme Court will also review a challenge to the US Food and Drug Administration (FDA) approval of mifepristone, a highly safe and effective drug used in more than half of pregnancy terminations.3 The case is part of a wider, ongoing plan by conservative stakeholders to diminish the authority of federal executive agencies. Congress empowered the FDA to use rigorous scientific data to determine the safety and effectiveness of pharmaceuticals. In 2000, the agency used a strict risk assessment methodology to review the safety and effectiveness of mifepristone. Beyond reproductive health care, this case could also undermine the FDA’s ability to make evidence-based judgments of other treatments free from political interference.

With the US Supreme Court poised to further constrict reproductive rights, abortion remains a fundamental issue for the electorate. Voters have supported abortion rights in all 7 statewide ballot initiatives to date. Abortion referenda could be on the ballot in several more states this November.

Transgender Care

Access to transgender health care has also become politically charged. The American Academy of Pediatrics considers gender-affirming care (eg, puberty-blocking medications, hormone therapies to
facilitate gender transition, and surgeries for adolescents in some cases) a medically necessary standard of care for transgender and nonbinary youths who experience distress from having gender identities that do not align with their sex assigned at birth. Transgender care is associated with increased quality of life, decreased risk of depression and suicide, and improved psychological well-being.4

Since 2022, 22 states (encompassing >35% of youth) have passed bans or restrictions on gender-affirming care for minors. Although these laws vary, most create civil or criminal liability for health care professionals, and some also hold parents liable, risking a child’s removal from their home. Alternatively, at least 11 states and Washington, DC, have enacted “shield” laws to protect access to gender-affirming care, including for people traveling from other states.

Several federal district courts have weighed state bans on gender-affirming care. The US Court of Appeals for the Sixth Circuit and the 11th Circuit have ruled that state restrictions can remain in place while lawsuits continue. Notably, both cases cited Dobbs in holding that gender-affirming care, like abortion, is not “deeply rooted” in the nation’s history or traditions, and that bans do not discriminate on the basis of sex.

Over the past few years, numerous federal lawsuits have weighed the legality of sports bans for transgender athletes, access to restrooms, insurance coverage for persons receiving gender-affirming care, and the extent to which the Americans with Disabilities Act covers gender dysphoria. Even though the US Supreme Court has thus far declined to take up a case surrounding gender-affirming care or other transgender rights issues, the growing volume of litigation suggests a case could be on the horizon.

Firearm Safety

Gun violence is a public health crisis. An estimated 40 000 gun-related deaths (including from intentional and unintentional shootings and suicides) have occurred each year since 2020, which is about 118 every day. Although firearms are the leading cause of death among children, Congress has refused to enact evidence-based measures supported by most US voters, including bans on assault weapons, raising the age of purchase, and universal background checks.

The US Supreme Court has made it increasingly difficult to enact firearm safety legislation. In 2022, the Court enunciated a new “historical analogue” test in which gun laws must be sufficiently similar to those in place in 1791 when the Second Amendment was enacted. The Court could apply this unrealistic standard this term in United States v Rahimi, which concerns a decades-old federal law barring firearm possession by people subject to domestic violence restraining orders.5 This law has prevented the purchase of more than 77 000 guns by people subject to domestic violence restraining orders over the past 25 years.

In 2 additional cases, the US Supreme Court will decide whether a New York state official violated the First Amendment by encouraging companies to forgo doing business with the National Rifle Association after the deadly 2018 school shooting in Parkland, Florida; and whether the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives can lawfully classify bump stocks as machine guns, which it began doing after a massacre involving bump stocks at a music festival in 2017 in Las Vegas, Nevada.

The bottom line: many communities want to respond to the scourge of gun violence in the US, yet the US Supreme Court may foreclose the increasingly limited avenues to do so. And at the same time, political paralysis persists in Congress and in many states on this issue.

COVID-19 Vaccines

Historically, societies have often united to face common threats. Yet the COVID-19 pandemic revealed deep partisan cracks in US society. During the pandemic, more than 30 states passed laws...
curtailing executive powers to declare emergencies, mandate vaccinations or masks, quarantines, and business closures. More than 1000 lawsuits challenged COVID-19 measures, about one-quarter of which invalidated them.  

Most notable is the backlash against COVID-19 vaccines, which has spilled over to routine childhood immunizations. Last year, several states introduced or passed antivaccine legislation, such as in Tennessee (eliminating all vaccine requirements for home-schooled children), Iowa (eliminating a requirement that schools educate students on human papillomavirus vaccination), and Florida (barring school districts from requiring COVID-19 vaccines).

Disinformation about vaccine safety is rampant. Florida’s Surgeon General has urged halting mRNA COVID-19 vaccines, citing discredited theories that vaccines carry “risks of contaminant DNA integration into human DNA.” The FDA has firmly refuted these claims, citing a lack of evidence and implausibility. More than 1 billion doses of mRNA vaccines have been safely administered worldwide; the vaccines have been credited with averting close to 20 million deaths. Still, Idaho has introduced a bill that would criminalize giving an mRNA vaccine of any kind, and other states could follow suit.

Health should be one of the most cherished values in US society, fundamental to all rights and liberties. Access to essential health services and protection from health threats should not hinge on who is in power or in which state you live. On the ballot this year and on the US Supreme Court’s docket, however, public health hangs in the balance.

ARTICLE INFORMATION
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